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IN THE COURT OF APPEALS OF MISSISSIPPI

JERRY LEE JENKINS, III

**FILED**

APPELLANT

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COURT OF APPEALS

VERSUS

NO. 2007-KA-00913-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

ORAL ARGUMENT NOT REQUESTED

RESPECTFULLY SUBMITTED,

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**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

**Procedural History**

Jerry Lee Jenkins was convicted in the Circuit Court of Oktibbeha County on a charge of burglary of a dwelling and was sentenced to a term of 16 years in the custody of the Mississippi Department of Corrections. (C.P.98) Aggrieved by the judgment rendered against him, Jenkins has perfected an appeal to this Court.

**Substantive Facts**

In March 2003, Yolanda Morgan, a student at Mississippi State University, was living in an apartment in Starkville. Her boyfriend Jerry Jenkins was a student at the University of Southern Mississippi, but frequently visited Ms. Morgan in

Starkville. One Sunday in March 2003, while Jenkins was visiting Ms. Morgan, a "neighbor contacted the police." Officers came to her apartment and arrested Jenkins for assault. (T.129-33)

Thereafter, "for a month or so" Ms. Morgan "didn't deal with Mr. Jenkins at all." However, "[a]fter a while" Ms. Morgan relented and began accepting telephone calls from Jenkins and they "started back seeing each other." (T.133-34)

On Friday, September 19, 2003, Ms. Morgan prepared to take a trip to Atlanta with some of her "friend girls." When she telephoned Jenkins to let him know that she would be away for the weekend, he initiated "a long drawn-out discussion" about why she was traveling to Atlanta. Ms. Morgan told Jenkins that she simply wanted a weekend away to do "girl stuff" with her "friend girls" and that she "would see him... another weekend." Ms. Morgan took the trip to Atlanta but "got into a lot of arguments" with Jenkins "over the phone" while she was away. Jenkins apparently suspected that she was traveling with another man and hounded her about his suspicions. (T.135-36)

Ms. Morgan returned to Starkville the following Sunday, September 21, 2003. While she was en route back home, she maintained telephone contact with Jenkins, often advising him of her current location. She arrived at her apartment "around ... 10:30 or so." Having told Jenkins that she would notify him when she got home, Ms. Morgan "called him in Bolton, Mississippi," where he was residing at the time. No one answered the phone. As Ms. Morgan was unpacking, Jenkins called her from a number she did not recognize. Jenkins informed her that he "was in Jackson with his younger brother" and that they were "going to the movies." The

conversation devolved "into a whole other discussion" about their relationship. During this conversation, Ms. Morgan's phone "beeped" and she "clicked over to answer a call" from her friend Donald Sharp, who told her that he "needed to drop off" a notebook at her apartment. After Ms. Morgan "clicked back over" to resume her conversation with Jenkins, they continued their "debate or dispute" about their relationship. Mr. Sharp arrived, "dropped the notebook and stuff off," and "went back outside and got in his car." At this point, Jenkins called Ms. Morgan again, and she could hear him Jenkins "gasping" on the other end of the line. Again, there was a "beep" on her telephone, indicating a call from Mr. Sharp. Based on what he told her, Ms. Morgan opened her door to see whether someone was lurking outside her apartment. (T.136-42)

Because "[i]t was pitch black," Ms. Morgan "didn't see anything." Still on the phone with Jenkins, she asked him where he was. He said something to the effect of, "You know where I am ... I'm outside your house." He then "proceeded to say that he wanted to talk." Ms. Morgan closed the door and "push the knob in to lock" it. She then replied that she had no desire to talk and that their relationship was finished. She also said, "This is crazy ... [W]hy are you up here? I didn't tell you to come up here." Jenkins continued to ask her to open the door. She maintained that she did not want to open the door, and that the relationship was over. Jenkins pressed her, and she told him repeatedly, "It's over." The third or fourth time that she told him this, he said "'Okay,'" real calmly, and hung up the phone." (T.142-43)

Thinking that Jenkins was leaving the property, Ms. Morgan "started walking" to her bedroom. As she did so, she "heard a big crash." Jenkins had kicked in her

living room door, which "flew open," and he entered her house. She ran to her bedroom and tried to close the door, but she "didn't have enough strength, because he had put his fist through the door, and he started pushing on it." Jenkins got into the bedroom and "punched" her repeatedly in the face. He continued to hit and punch her even after she had fallen to the ground. She "blackened out ... for a little while" but she "could feel the pressure of his foot" against her stomach. After Ms. Morgan tried to retrieve her mobile phone from her pocket, Jenkins "grabbed" the phone and "ran out the door." (T.143-45)

Upon looking at her reflection in the bathroom mirror, Ms. Morgan saw that her face "was split open" and that her lip was severely damaged as well. Ms. Morgan then called the police and several friends, including Mr. Sharp, for help. Ms. Morgan was taken to the hospital. Emergency personnel initially feared that she had suffered skeletal damage. Ultimately she "had 21 stitches total" in her face. (T.145-47)

On redirect examination, Ms. Morgan testified that Jenkins "never lived" with her in the apartment in question, that she had the only key to it, and that all of the utilities had been secured in her name only. (T.176)

Detective Shawn Word of the Starkville Police Department was dispatched to the scene that night. When he arrived, "Ms. Morgan opened the door." He "immediately noticed immense blood coming from her face..." Detective Word obtained a description of Jenkins' vehicle and "started trying to get it out to other units to be looking out for that vehicle." (T.180-84)

Asked what he had observed at the crime scene, Detective Word testified, "There was a shoe print on the front door right to the left of the doorknob that had dirt and mud, like if you had kicked the door." The wood had been cracked and the door appeared to have been kicked open. The bedroom door appeared to have had a fist put into it and was smeared with what appeared to be blood. (T.184-86)

The defendant's mother testified that after this incident, Ms. Morgan took personal property belonging to Jenkins to her house in Vicksburg. At that point, Ms. Morgan stated that she wanted to continue the relationship Jenkins. (T.210-12)

Jenkins testified that he kept personal belongings, clothes and toiletries at Ms. Morgan's apartment and that he had a key to the apartment. He denied that he had used his foot to obtain entry to the residence. He went on to suggest that he had suspected Ms. Morgan of infidelity because she had put his toiletries out of plain view and because he had found condoms in the apartment. As a teetotaler he had been displeased to find alcoholic beverages and marijuana. Regarding the night in question, he testified that he entered the apartment without force. Thereafter, he and Ms. Morgan began to argue about her alleged drug and alcohol use and whether they had the same goals for their lives. The argument escalated; Jenkins became "frustrated"; Ms. Morgan slapped him first; and he "reacted" out of his "frustration." (T.225-39)

Jenkins finally produced the key that he alleged fit the lock on Ms. Morgan's door. It was admitted into evidence. On cross-examination, he admitted that he had not turned this key over to the police. (T.240-41) The state put on proof in rebuttal that the key produced by Jenkins did not match Ms. Morgan's key. (T.295-

96) Ms. Morgan testified in rebuttal that Jenkins had never had residency in this apartment. (T.293)

### **SUMMARY OF THE ARGUMENT**

The verdict is based on legally sufficient proof and is not contrary to the overwhelming weight of the evidence.

### **PROPOSITION:**

#### **THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF AND IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE**

On appeal, Jenkins contends the evidence is legally insufficient to sustain the verdict and, alternatively, that the verdict is contrary to the overwhelming weight of the evidence. To prevail on the claim that he is entitled to a judgment of acquittal, he faces the formidable standard of review set out below:

In reviewing the sufficiency of the evidence, the standard of review is quite limited. *Clayton v. State*, 652 So.2d 720, 724 (Miss.1995). All of the evidence is to be considered in the light most consistent with the verdict. *Id.* The prosecution is given the benefit of "all favorable inferences that may reasonably be drawn from the evidence." *Id.* This Court will not reverse unless the evidence with respect to one or more of the elements of the offense charged is such that



reasonable and fairminded jurors could only find the accused not guilty. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993).

*Brown v. State*, 796 So.2d 223, 225 (Miss.2001).

This rigorous standard applies to the claim that the defendant is entitled to a new trial:

The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182. "This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss.Ct.App.2001).

*Smith v. State*, 868 So.2d 1048, 1050-51 (Miss.App.2004),

Furthermore,

The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993)

(citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).

(emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss.App.1999).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As this Court recently reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss.2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

The state respectfully submits that Jenkins' challenge to the sufficiency and weight of the evidence presented is essentially an improper attempt to relitigate factual issues, including credibility of the witnesses, properly resolved by the jury. Incorporating by reference the facts set out under the Statement of Substantive Facts, the state asserts the trial court did not abuse its discretion in submitting this case to the jury and refusing to overturn its verdict. The evidence is not such that reasonable jurors could have returned no verdict other than not guilty, or such that to allow it to stand would be to sanction an unconscionable injustice.

The stated presented unequivocal evidence that Jenkins was not a resident of Ms. Morgan's apartment; that he did not have her permission to enter her

apartment that night; and that he in fact broke and entered it with the intent to commit assault on her. Jenkins' proof to the contrary simply created an issue of fact for the jury's resolution.

**CONCLUSION**

The state respectfully submits that the arguments presented by Jenkins have no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

A handwritten signature in cursive script, appearing to read "Deirdre McCrory", written in black ink.

**BY: DEIRDRE McCRORY  
SPECIAL ASSISTANT ATTORNEY GENERAL**

**CERTIFICATE OF SERVICE**

I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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